IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5713 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAGJIBHAI WAGHJIBHAI TRIVEDI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR SV RAJU for Applicant(s) : 1,
Mr. RC Kodekar, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2007
ORAL JUDGMENT

By way of this application under Section 482 of the Code of Criminal Procedure, the petitioner who was at the relevant time working as Assistant Public Prosecutor has prayed for an appropriate order to expunge the remarks made

against him in the judgment and order dated 22.8.1994 passed in Criminal Case No. 766 of 1993 by the learned JMFC, Rapar, Kutch.

2. It appears from the record that the applicant was in-charge of one Criminal Case No. 766/1993 as Assistant Public Prosecutor and at the time of trial and disposal of the said criminal case the petitioner did not remain present due to his personal difficulty and even the papers of the case were with him. It appears that the learned Magistrate was annoyed and has passed some strictures against the applicant.

3. This Court is not narrating the events in detail in view of the fact that strictures were passed by the learned Trial Court against the applicant without giving any opportunity to him. The case is squarely covered by the decision of the Hon'ble Supreme Court in the case of ***S.K. Viswambaran Vs. E. Koyakunju & Others,*** reported in ***AIR 1987 S.C. 1436*** wherein the Hon'ble Supreme

Court has held that before any strictures are passed a reasonable opportunity is required to be given to the person against whom strictures are passed. Admittedly in the present case, before passing the strictures against the applicant no opportunity had been given to the applicant. This Court is at present not considering whether there were justifiable reasons for the applicant in not remaining present at the time of trial. However suffice it to say that before passing any stricture the learned Trial Court had not given any opportunity to the petitioner.

4. In the facts and circumstances and considering the judgment of the Hon'ble Supreme Court in the case of *S.K. Viswambaran [supra]*, the strictures passed against the applicant while delivering the judgment and order dated 22.8.1994 in Criminal Case No. 766 of 1993 are hereby expunged. Rule is made absolute accordingly.

[M.R. Shah, J.]

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